

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

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In Re:) Case No. 19-30088
) Chapter 11
PG&E CORPORATION AND PACIFIC)
GAS AND ELECTRIC COMPANY) San Francisco, California
) Friday, July 8, 2022
Debtor.) 10:15 AM
)
ORAL RULING ON OBJECTIONS TO
CLAIMS OF TODD GREENBERG
[9455]

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE DENNIS MONTALI
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES (All present by video or telephone):

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1 SAN FRANCISCO, CALIFORNIA, FRIDAY, JULY 8, 2022, 10:15 AM

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3 (Call to order of the Court.)

4 THE CLERK: Court is now in session, the Honorable
5 Dennis Montali presiding. Calling the matter of PG&E
6 Corporation. I'll bring Counsel in now, Your Honor.

7 THE COURT: All right. Good morning. May I have
8 appearances, please? Ms. Dodge.

9 MS. DODGE: Yes. Jennifer Dodge on behalf of
10 reorganized debtor, Pacific Gas and Electric Company.

11 THE COURT: Mr. Lapping.

12 MR. LAPPING: Good morning, Your Honor. Richard
13 Lapping on behalf of Todd Greenberg.

14 THE COURT: Okay. One second here. I don't see Mr.
15 Greenberg's name on the list, unless he's the phone call.

16 MR. LAPPING: He's the phone call.

17 THE COURT: Okay. All right. All right. So I called
18 you today for this hearing to give an oral ruling on the matter
19 that was tried last week. So I'm going to just make some
20 statements that are obvious and not controversial, but I'm
21 going to make it for the record and to establish the context.

22 So there was a trial on June 27th on PG&E's objection
23 to Mr. Greenberg's claim, claim number 77335, that was amended
24 subsequently to claim number 108542. And in the amended
25 amount, that was a claim for \$123,456.74. And of course, it

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1 pertains to Mr. Greenberg's dispute with PG&E over the loss of
2 power at his home in Fairfax, and it has nothing to do with
3 other claims objections that are against PG&E and that are
4 being dealt with elsewhere.

5 So I've stated the trial was on June 27th after the
6 matter was submitted. I decided to make an oral ruling under
7 the provisions of Federal Rule of Bankruptcy Procedure
8 7052(a)(1) following a bench trial. An oral ruling that
9 contains findings and conclusions is permissible. And in my
10 narrative that follows, the statement and the recitals will, in
11 fact, be the findings and conclusions on the record. I don't
12 intend to do any separate statement of findings or conclusions
13 because that is not required under the rule.

14 And what I'm going to explain in a moment, and explain
15 in my reasoning, I've come to the conclusion that PG&E's
16 objection should be sustained, and Mr. Greenberg's claim, as
17 amended, should be disallowed in its entirety. I'll explain
18 myself hopefully fully. Many of the facts, of course, are not
19 contested, but I'm restating some of them for context and
20 completion of the record.

21 Mr. Greenberg and his family owned property in
22 Fairfax, California at 47 Bolinas. In relevance to that
23 property, there are two units, the lower of which is where Mr.
24 Greenberg previously resided and where the incident that is the
25 subject of this trial occurred. Next door to his home or his

PG&E Corporation and Pacific Gas and Electric Company place at 47 Bolinas is 31 Bolinas, which is a real property owned by someone else and who has various business tenants. And what's, of course, the relevance, you all know this, that beginning at least in December of 2015 -- and perhaps earlier; it's not important -- PG&E began significant electrical upgrade and other kind of related work at 31 Bolinas, and to reconnect the needs of the -- excuse me, the electrical needs of the parties at that location. And they were not -- PG&E was not engaged in any activity at 47 Bolinas.

Mr. Greenberg and the subject of his damage claim is what was then a twelve-year-old refrigerator that failed during a window of time between February 14th and February 22nd, 2016. There is no dispute the immediate cause of the failure was the burnout or the failure of a compressor starter assembly that Mr. Greenberg believes was caused by PG&E or its contractor on the job at 31 Bolinas of Veterans Power and that that caused the compressor to fail, and that led to the damages that I will refer to.

Mr. Greenberg promptly after that, I believe it was February 25th, engaged a company called the refrigerator doctor or the Appliance Repair Doctor, excuse me, who repaired the compressor for a charge of \$288.51 that was paid to the Repair Doctor by Mr. Greenberg's home warranty provider. And the refrigerator since then, presumably, has been operating, or if it hasn't been, it's not relevant.

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1 I'm going to come back in a few moments to the
2 components that I've considered. And let me say, as I stated
3 at the outset, I've concluded that PG&E is not culpable and the
4 claim needs to be disallowed. But if for some reason my
5 decision is reversed if there is an appeal, I think it's useful
6 to find and to state at least my interpretation of the facts
7 and the findings and what amounts to what might have been a
8 damage claim, were I to determine otherwise and hold PG&E
9 culpable.

10 So the key issue obviously is did PG&E or its
11 contractor cause the failure of the compressor in such a way
12 that it's liable, and the conclusion that I reached, or excuse
13 me, the finding that I reached and therefore the legal
14 conclusion is no. No, it did not.

15 First of all, during the critical period, the eight
16 days in February of 2016 that I mentioned, there was simply no
17 outage at all at the location, outage in the sense of power
18 going out the way we all understand it, if there is a blackout
19 or the power goes out in the neighborhood or at a location, and
20 there was none.

21 And so whether the fact that there was some outage
22 some weeks later in connection with work at 31 Bolinas is
23 ultimately, in my opinion, no relevance. The problems at 31
24 Bolinas included anticipated outages, but none prior to
25 February of 2016. And in fact, later in March and finally in

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1 April, there was scheduled outages or interruption to power
2 that did not affect Mr. Greenberg or his refrigerator.

3 So the question comes down to whether there were
4 something short of an outage, a fluctuation or something in the
5 delivery of power that would have caused the damage that Mr.
6 Greenberg reported and experienced. Again, I don't deny that
7 he experienced the problem. It only turns on causation here,
8 in my opinion.

9 So that in turn then leads me to decide whether PG&E
10 or through its agent Veterans Power was culpable in some way.
11 I spent time -- although it hasn't been a long time since we
12 had the trial, I nevertheless went through Exhibits I through O
13 and S through EE, and I find no specific evidence or indication
14 to support the conclusion that PG&E or Veterans Power caused
15 any such fluctuations.

16 What I find perhaps most convincing, in addition to
17 reviewing the absence of proof in those exhibits, is the
18 testimony of Dustin Dear and his explanation of the situation
19 with fuses and the three-line phasing that was part of the work
20 being done at 31 Bolinas. There was indeed some reference
21 communicated to PG&E from Veterans Power -- or it's not
22 relevant who communicated. There was a colloquy at some point
23 that Mr. Dear described on March 16th, 2016, having to do with
24 fuse situation.

25 But it was not established from the evidence that that

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1 problem, first of all, that it caused any disruption or
2 interruption or fluctuation in those eight days in February
3 that I described. And in fact, I find and come to the factual
4 determination that, based upon the presence of what Mr. Dear
5 described as the loop and the explanation of the redundancy of
6 looping in the circuitry, even a fuse failure wouldn't have
7 caused an interruption or distortion in the power because of
8 the way of the so-called loop system.

9 So I'm convinced that that leads me to the conclusion
10 that there is simply nothing to support the finding that Mr.
11 Greenberg and his counsel would have me made, the no-proof of
12 the cause. So that leads me to the conclusion that PG&E cannot
13 be liable because the notion that -- the burden is on Mr.
14 Greenberg to show that, but he has not shown that --
15 notwithstanding his experience and the fact that the
16 refrigerator failed during those eight days that I describe --
17 that PG&E or neither PG&E or Veterans Power were acting below
18 the applicable standard of care as established either by the
19 electrical tariffs 14 or 2. 14's a little clearer, but even 2
20 used a similar phrase.

21 So it's the question there is no culpability if there
22 absent a failure to exercise reasonable diligence. So the
23 phrase exercised reasonable diligence I'm persuaded that it
24 happens but it doesn't happen from the events establishing that
25 either PG&E or Veterans Power failed to exercise reasonable

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diligence.

Much has been made -- Mr. Lapping made an appealing argument -- was not persuasive because of what I'm about to say -- an appealing argument equating the situation that, well, if a vehicle hits a pole, there is a vibration. Well, a vehicle didn't hit the pole. This work was underground, so there was no pole to hit by any vehicle. And we're back to the question of what was taking place underground. And I simply don't accept the metaphor of a shaking of the pole.

And therefore, because of that premise, I reject the notion that -- again, not criticizing Mr. Lapping, but his argument is not persuasive. This is not where the doctrine of *res ipsa loquitur* applies. *Res ipsa loquitur* we all learned in law school, but transfer that to simple terms, it's not a strict liability standard. If there were a strict liability of standard, perhaps Mr. Greenberg will prevail. There is not. There is the standard of exercise reasonable diligence.

So that leads me to the conclusion that Mr. Greenberg is not entitled to recover damages of any amount based upon the situation, even though we all know that for some reason the refrigerator failed and there were damages. I therefore will issue an order that says for the reason stated the claim is disallowed.

Now I stated, and I will summarize briefly, my review of the evidence in any event because I believe it's perfectly

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1 proper for me to make -- I won't call them alternative rulings,
2 but just underlying facts. If there is an appeal, and the
3 court determines that there has been a misapplication of the
4 standard, at least the record should reflect the following,
5 that I find from the evidence -- I told you, I acknowledged
6 that Mr. Greenberg experienced a loss because of the power
7 outage. He did not suffer a loss because of the amount charged
8 by the Appliance Doctor because that was paid by someone else,
9 not Mr. Greenberg.

10 Mr. Greenberg did suffer damage to his food and other
11 things in the refrigerator. The figure was \$918.98. It's not
12 disputed. He incurred an expense of 225 dollars for cleanup
13 for stuff that came out of the refrigerator. Not disputed. He
14 experienced at least the potential for damage to a carpet in
15 the kitchen that, as far as the evidence has established, it
16 has not yet been repaired, but the claim that he is asserting
17 is nominal, 168 dollars, and I take that as a component of a
18 damage if there were any.

19 The harder issue is what to do about the damage to the
20 flooring. The estimates vary based upon the method of
21 assessment and certainly the timing. Over the period of time
22 leading up to the trial, Mr. Greenberg had different opinions
23 as to what was his measure of damage to the flooring in his
24 apartment. But I'm satisfied that the more persuasive
25 conclusion is based upon not what's called the line of sight

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1 theory that he relied on, namely rooms outside of the kitchen,
2 but rather in more of the immediate area of the kitchen, and
3 determined that the damage that is compensable, if there is
4 liability, is limited to the kitchen.

5 And I add further that that's partly by the fact that
6 there is separation from the kitchen and the other rooms.
7 There's a slight level difference. There's a physical
8 separation. And the fact that the flooring may have a similar
9 appearance isn't dispositive.

10 It is also a fact that the flooring in the evidence
11 presented shows what I would expect in a long-used apartment,
12 wear and tear and other things. And as much as I'm sorry that
13 Mr. Greenberg suffered the loss, he doesn't get a free flooring
14 in his entire apartment at PG&E's expense. So I find from the
15 evidence that the only compensable damage, if there is
16 liability, would be limited to the immediate area of the
17 kitchen flooring.

18 And that takes me to Exhibit LL, which I find
19 dispositive. So in reviewing Exhibit LL, the immediate
20 flooring in the kitchen is 325 square feet. Based upon the
21 carpet company's estimate as set forth in Exhibit LL, I
22 estimate that one-half of the 1,600 dollars attributed would be
23 attributable to things such as the pull-up and the disposal and
24 the molding and what have you.

25 I take the four items that LL receives, flooring,

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1 removal, subfloor, and molding, and half of each would be 800
2 plus 400 plus 750 plus 300. I take those four figures and take
3 the estimated 4,300 dollars for the 325 square feet, those
4 figures total 6,550 dollars, as of February 2016. There is no
5 exact guidance in my mind, but I believe it would be
6 appropriate, based upon that evidence, to determine that those
7 are finite, calculable numbers, and it would not be unfair if
8 Mr. Greenberg were to have an allowed claim to apply a seven-
9 percent accrual on that amount up to the date of PG&E's
10 bankruptcy, which of course was January 29th, 2019.

11 So my math is not precise to the penny, but if I take
12 seven percent for three years, and it's just under three years
13 from the time of the damage to the time of the bankruptcy, I
14 would then add a twenty-one percent factor.

15 Let me going back. I may have confused issues. One
16 second.

17 Excuse me. So if I take the -- if I take the 6,550
18 dollars that I explained was the basis for the determination
19 for the damages in the kitchen related to the flooring, and I
20 go back and add the damaged food, the damaged carpet, the
21 cleanup and what have you, that leads to a total of \$7,861.98.
22 If I attribute a seven-percent accrual pre-petition, I would
23 then add roughly twenty-one percent. So I didn't do the math,
24 but you can take \$7,861.98 plus twenty-one percent to the
25 petition date. Once the petition date occurred, the post-

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petition interest accrues at the federal rate, and if that line were to be allowed, that would be the amount of his damage claim.

I will not -- I will not provide or determine that Mr. Greenberg has any compensable damage for his own time. I excluded that on the motion in limine, but I just repeated myself. There is no indication that there has been a basis to determine liability at PG&E, and similarly, the so-called lost rental.

First of all, Mr. Greenberg remained in the unit for quite some time. Secondly, and more importantly, it's pure speculation that the wear and tear and the minimal amount of damage evident in the flooring in those 325 square feet was the deterrent for any prospective tenants. Mr. Greenberg did not establish that any prospective tenant declined to rent the property, rent that unit, because of the condition of the flooring. In fact, it's almost inconceivable for me to imagine in an old apartment with its own wear and tear that somebody in need of housing would turn it down because of a few little spaces in the laminate.

But in any event, I'm reaching the conclusion that Mr. Greenberg is not entitled to any lost rental damage for the same reason that I said and also his own time. In his proposed Exhibit QQ, he determined and wished to have an increase in the amount of damage based upon the later City Carpets estimate.

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1 That was excluded as not being timely, and in any event, even
2 if it were timely, it would not support any further calculation
3 of the damage.

4 So I said, to repeat myself, I'm making the summary of
5 findings that I just gave in the damage calculation in the
6 event that for some reason my decision on the legal liability
7 is set aside.

8 And therefore the claim, for the reasons that I
9 stated, must be disallowed. I will ask Ms. Dodge to submit a
10 standard, simple form of order that recites that for the
11 reasons stated on the record, meaning the record at this
12 hearing today, that Mr. Greenberg's claim number 108 --
13 well, make it be complete -- 77335 as amended by 108542 is
14 disallowed in its entirety.

15 MS. DODGE: Thank you.

16 THE COURT: Well, anyone have any questions? That's
17 my ruling, and that's where I'm going to close the matter,
18 unless either counsel wish to be heard.

19 Mr. Lapping.

20 MR. LAPPING: No. Thank you, Your Honor. I think
21 it's very clear. Thank you.

22 THE COURT: Okay. Ms. Dodge?

23 MR. LAPPING: Thank you, Your Honor. We will get that
24 order submitted as you requested.

25 THE COURT: All right. Thank you.

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1 Thank you both for your participation and your time.
2 As I say, you both were very professional and very orderly and
3 very well prepared. And I compliment you on your service. And
4 I would say, if your clients are listening, that you both
5 performed admirably and capably and well. The fact that one
6 side wins and one sided loses is no reflection on the quality
7 of the lawyering. And again, it's no reflection or disapproval
8 of Mr. Greenberg or his position. It's just the way I come out
9 with the evidence.

10 All right. Thank you. I'm not going to shut the
11 hearing down. I'm going to conclude this matter, and we're
12 going to go to our 10:30 calendar.

13 MS. DODGE: Okay. Thank you, Your Honor.

14 MR. LAPPING: Okay. Thank you, Your Honor.

15 (Whereupon these proceedings were concluded at 10:38 AM)

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I N D E X

RULINGS:	PAGE	LINE
Claim 77335 as amended by 108542 is	13	10
disallowed in its entirety		



C E R T I F I C A T I O N

I, River Wolfe, certify that the foregoing transcript is a true and accurate record of the proceedings.



/s/ RIVER WOLFE, CDLT-265

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Phoenix, AZ 85020

Date: July 11, 2022

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